

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
ST. JOSEPH DIVISION**

SKYLAR D. KOONTZ,)	
)	
Plaintiff,)	
)	
v.)	Case No.: 5:21-cv-06006
)	
SCHNEIDER ELECTRIC, USA, INC.,)	
AND)	
DAVID E. WAREN,)	
)	
Defendants.)	

**DEFENDANTS SCHNEIDER ELECTRIC, USA, INC. AND DAVID E. WAREN'S
NOTICE OF REMOVAL**

COME NOW Defendants Schneider Electric, USA, Inc. and David E. Waren, through their undersigned attorneys, Baker Sterchi Cowden & Rice, LLC, and pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, and hereby remove the above-captioned case to the United States District Court for the Western District of Missouri. In support of removal, Defendants state as follows:

Factual and Procedural Background

1. Plaintiff filed this action in the Circuit Court of DeKalb County, Missouri, on November 20, 2020. The case is styled *Skylar Koontz v. Schneider Electric, USA, Inc. and David E. Waren*, case no. 20DK-CC00038.
2. Defendant Schneider Electric was served with the Petition on December 16, 2020.
3. Defendant David Waren was served with the Petition on December 30, 2020.
4. Pursuant to 28 U.S.C. § 1446(a), a full and complete copy of the state court file for this action as of this filing's date is attached as **Exhibit A**.

5. The lawsuit alleges Defendant Waren was acting within the course and scope of his employment with Defendant Schneider Electric when he rear-ended Plaintiff's vehicle on July 24, 2017.

6. As a result of the alleged collision, Plaintiff claims she has sustained "permanent, progressive, and continuous" injuries including injuries to her head, neck, and back, as well as "migraines, fatigue, sensitivity to light, mood swings, and difficulty with concentration."

Complete Diversity of Citizenship Exists Between the Parties

7. As alleged in the Petition, Plaintiff "is an individual resident and citizen of the State of Missouri." **Exhibit A**, ¶ 1. This allegation on its face therefore satisfies the pleading requirements for Plaintiff's citizenship. *Cf.*, *Roberts v. Gm Llc*, No. 4:13-CV-541 CAS, 2015 U.S. Dist. LEXIS 133776, at *2-3 (E.D. Mo. Oct. 1, 2015) (allegations of residency alone are insufficient to plead citizenship).

8. The Petition further pleads that Defendant Waren "is an individual resident and citizen of the State of Kansas." **Exhibit A**, ¶ 3. As with Plaintiff's allegation of her own citizenship, this allegation is sufficient to establish Defendant Waren's citizenship for diversity jurisdiction purposes.

9. Finally, the Petition pleads that Defendant Schneider Electric "is a foreign corporation with its principal place of business is Boston, Massachusetts." **Exhibit A**, ¶ 2. Pursuant to 28 U.S.C. § 1332(c)(1), a corporation is deemed to be a citizen of its state of incorporation and that of its principal place of business. The Petition plainly establishes that Defendant Schneider is neither incorporated in nor principally operated in Missouri and is therefore not a Missouri citizen.

The Amount in Controversy Exceeds \$75,000

10. In addition to complete diversity of citizenship, a state court action must also seek a sum exceeding \$75,000. 28 U.S.C. § 1332(a).

11. Consistent with Missouri Rule of Civil Procedure 55.05, Plaintiff's Petition does not specify a dollar amount sought. Recognizing the dichotomy created by Rule 55.05's prohibition on pleading a specific amount of monetary relief in tort cases and § 1332's jurisdictional threshold, this Court has routinely permitted the use of pre-suit demands to prove the amount in controversy exceeds the \$75,000 jurisdictional threshold. *See, e.g., McEwen v. Stevens Transp., Inc.*, No. 14-03104-CV-S-BP, 2014 U.S. Dist. LEXIS 192581, at *3 (W.D. Mo. May 12, 2014) ("Settlement demand letters may be considered as evidence of the jurisdictional minimum"), *Embry v. Everest Coll.*, No. 16-0580-CV-W-FJG, 2016 U.S. Dist. LEXIS 119661, at *11 (W.D. Mo. Sep. 6, 2016), *Turner v. Baker*, No. 05-3298-CV-S-SWH, 2005 U.S. Dist. LEXIS 31755, at *8-9 (W.D. Mo. Nov. 22, 2005). In particular, this Court in *Turner* acknowledged the protections afforded to settlement demands by Federal Rule of Evidence 408 give way when such demand is utilized to prove the amount in controversy. *Turner*, 2005 U.S. Dist. LEXIS 119661 at *8.

12. The most recent demand (attached hereto as **Exhibit B**) from Plaintiff—dated two days prior to her lawsuit being filed—boldly seeks \$350,000.

13. Plaintiff's pre-suit demand firmly establishes the amount in controversy exceeds the jurisdictional minimum, and thus satisfies the final prong of § 1332's test for federal jurisdiction.

14. Importantly, the amount in controversy analysis does not require proof that the damages are greater than the requisite amount, and only asks whether a fact finder *could legally*

conclude that they are. See *James Neff Kramper Family Farm P'ship v. IBP, Inc.*, 393 F.3d 828, 831 (8th Cir. 2005). Defendants therefore do not concede Plaintiff's demand constitutes a true assessment of alleged damages and reserve every right to vigorously contest the same.

All Procedural Requirements for Removal Have Been Satisfied

15. Venue in this District is proper pursuant to 28 U.S.C. § 1441(a), as this District geographically embraces DeKalb County, Missouri, where this action was originally filed.

16. Divisional venue is further proper in the St. Joseph Division pursuant to § 1441(a) and Local Rule 3.2(a)(1)(B).

17. All defendants consent to removal pursuant to 28 U.S.C. § 1446(b)(2)(A).

18. Plaintiff and the Circuit Court of DeKalb County are being notified of this removal as required by § 1446(d).

WHEREFORE, Defendants Schneider Electric, USA, Inc. and David E. Waren hereby give notice that this action is removed from the Circuit Court for DeKalb County, Missouri to the United States District Court for the Western District of Missouri, St. Joseph Division.

Respectfully submitted,

BAKER STERCHI COWDEN & RICE, L.L.C.

/s/ James S. Kreamer

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**ATTORNEYS FOR DEFENDANTS SCHNEIDER
ELECTRIC, USA, INC. and DAVID E. WARREN**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was electronically filed using the Court's CM/ECF system on this 13th day of January, 2021, and a copy was served via U.S. Mail, postage prepaid, to the following counsel:

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/s/ James S. Kreamer